

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

In Re:

Refer Reply To:
CC:TEGE:EB:EC
PLR-104199-08

Date:
May 30, 2008

LEGEND:

Taxpayer =
Employee =
Year 1 =
Date A =
Date B =

Dear :

This letter is in response to a letter dated January 28, 2008, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, Taxpayer requested a ruling that Employee, Taxpayer's former president and chief executive officer, is not a "covered employee" for Taxpayer's Year 1 taxable year, and accordingly, that no compensation paid to Employee with respect to Taxpayer's Year 1 taxable year is subject to the deduction limitation of section 162(m). The facts, as represented, are as follows.

Taxpayer is a publicly held corporation. Taxpayer maintains a July 1 to June 30 taxable year. Employee served as Taxpayer's president and chief executive officer from Date A to Date B of Year 1. On Date B of Year 1, Employee resigned as Taxpayer's president and chief executive officer and became a senior advisor to Taxpayer. You represent that Employee did not perform any policy making functions for Taxpayer after Date B of Year 1.

Pursuant to the executive compensation disclosure rules under the Securities Exchange Act, Taxpayer listed Employee in its Year 1 Summary Compensation Table (Table). You represent that Employee was not an executive officer of Taxpayer on the last day of Taxpayer's Year 1 taxable year and was listed on the Table only because Employee served as Taxpayer's president and chief executive officer for a portion of Taxpayer's Year 1 taxable year, as required by the disclosure rules.

Section 162(a)(1) of the Code allows a deduction for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) of the Code provides that for any publicly held corporation no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1 million.

Section 162(m)(2) of the Code defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act.

Section 162(m)(3) of the Code defines covered employee as any employee of the taxpayer if (A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer).

Section 1.162-27(c)(2)(ii) of the Regulations generally provides that whether an individual is a covered employee for purposes of section 162(m) is determined pursuant to the executive compensation disclosure rules under the Securities Exchange Act. The Securities and Exchange Commission's rules relating to executive compensation disclosure under the Exchange Act are contained in Item 402 of Regulation S-K, 17 CRF 229.402. These rules require disclosure of compensation awarded to, earned by, or paid to certain executive officers.

Therefore, based solely on the facts presented, we rule as follows:

For purposes of section 162(m) of the Code, Employee is not a "covered employee" for Taxpayer's Year 1 taxable year, because Employee was not an executive officer on the last day of such year.

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Kenneth M. Griffin
Senior Technician Reviewer
Executive Compensation Branch
Office of Division Counsel /
Associate Chief Counsel /
Tax Exempt & Government Entities